



Messenger

MILWAUKEE BAR ASSOCIATION, INC.

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New Day Awning at the MBA

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Be Part of the *Messenger*

Please send your articles, editorials, or anecdotes to editor@milwbar.org or mail them to Editor, Milwaukee Bar Association, 424 East Wells Street, Milwaukee, WI 53202. We look forward to hearing from you!

If you would like to participate on the *Messenger* Committee, we have seats available. Please contact James Temmer, jtemmer@milwbar.org.



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8th Annual State of the Court Luncheon

Wednesday
October 12, 2011
Noon – 1:30 p.m.
Wisconsin Club
900 West Wisconsin Avenue,
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Contact Katy Borowski to register:
kborowski@milwbar.org

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Contact Information

Milwaukee Bar Association, Inc.

424 East Wells Street

Milwaukee, WI 53202

Phone: 414-274-6760

Fax: 414-274-6765

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Letter From the Editor



Charles Barr, Editor

September 17 at age 58.

I write about Nathan, the day before his funeral, because he was a personal friend. Of course, many, many of us, and many more outside the legal community, can say the same. Nathan had no shortage of friends.

I met Nathan in 1980, when he had just started at the U.S. Attorney's Office in Milwaukee, and I had—well, just started. It turned out that his wife was Susan Stolzer; I knew her and her family well from high school days in Western Pennsylvania. The Fishbachs quickly became family friends. Nathan is known to many of his colleagues as Nate; I call him Nathan because that's what Susan calls him. Through the soccer games, bar mitzvahs, and the stories we swapped when we met for dinner on the occasional Saturday night (too few, in retrospect), my wife Robyn and I watched their three sons—Jeffrey, Brian, and Michael—grow to adulthood, and Susan and Nathan watched our three kids do the same.

My path crossed Nathan's professionally, too: occasionally as adversaries, more often as co-counsel, and sometimes on projects that had nothing to do with clients. Nathan referred many cases to me over the years, but that was just the tip of the iceberg. He was never too busy to lend an ear, offer counsel, or strategize. I turned to him at dark moments. He gently coaxed me into bar activities and other projects, showing without telling me how I could grow by helping others. He was at once a contemporary and a mentor. Had he lived to 100, instead of being robbed of the chance to see his sons marry and give him grandchildren, I could never have repaid him.

As an advocate, Nathan was flat out brilliant. He had an uncanny, astounding instinct for finding the truth—quickly. The undisputed master of all manner of complex cases, he was a big picture guy *par excellence*. He was decisive and unerring in hitting on the right strategy. He was the ultimate realist, never allowing wishes or sentiment to fog

the clarity of his vision. I lost count of how many files were closed with the words, or the thought, "Nathan was right."

Nathan had an edgy and potent sense of humor, with impeccable timing. Sometimes I found it difficult to keep up with him: he spoke quickly, which, it finally occurred to me, was because he thought more quickly than I. Yet he spoke to a jury so easily and naturally, it was as if he were sitting with them in their living rooms. Nathan had a way of making you feel like the smart one, when in fact all the brainpower was coming from him. He was a formidable advocate, to say the least, but never once flaunted it, never once rubbed anyone's face in it, never once disrespected anyone. This was a prosecutor who, after the guilty verdict came in, made sure to shake the defendant's hand and wish him luck.

Nathan never, ever, subordinated the cause of justice to his own aggrandizement. Of the thousands of lawyers I have met, Nathan is the very last one I could imagine bending or skirting even the most minor of rules. He not only played by the rules; he breathed life into them. He showed us, without telling us, why they are important.

But again, Nathan's advocacy is the tip of the iceberg. His legacy soars far above his successes in individual cases. It is understatement to observe that he was selfless in service of the profession and the community. He found the time for any worthwhile project, law-related or otherwise. Most readers of this publication know of Nathan's professional accomplishments. He was the driving force to establish the MBA in its present home. The State Bar can say the same about its home. He helped launch the Milwaukee Justice Center. It is difficult to think of any significant initiative in the Milwaukee legal community during Nathan's career that does not bear his imprint.

This year, Nathan received lifetime achievement awards from the MBA, the Eastern District of Wisconsin Bar Association, and the Seventh Circuit Bar Association—the trifecta, as I kidded him. At the MBA's Annual Meeting in June, when he accepted the award, his voice and message were strong and clear. His ordeal had visibly aged him, but he looked solid, on the upswing. I convinced myself that he had beaten it. It is hard to accept, now in September, that he is gone.

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Volunteer Spotlight

Peter J. Stone



Pete Stone is a partner with Foley & Lardner in Milwaukee and a member of its Business Litigation & Dispute Resolution and Distribution & Franchise Practices. He has been litigating a wide variety of business and commercial

disputes in federal and state courts for 35 years, and also has considerable experience representing clients in various dispute resolution proceedings, including mediation and arbitration. He has served as a volunteer civil case mediator for the Wisconsin Court of Appeals.

Pete received a bachelor's degree from the University of Wisconsin-Madison in 1973, where he majored in economics, and he received his J.D. degree from Stanford

University in 1976. His interest in volunteer legal work began at Stanford, where he served as president of the student legal aid society.

Pete volunteers a couple of afternoons a month for the Marquette Volunteer Legal Clinic at the Milwaukee Justice Center, a walk-in legal information and referral clinic in the Milwaukee County Courthouse staffed by volunteer attorneys, who work with and supervise Marquette University law students. As Pete states, "We provide free initial advice and basic legal information to persons in need of help navigating the civil justice system. We actually counsel clients on a fairly wide variety of civil issues, and I find the work gratifying because even when there is no good answer or the answer is not what the client wants to hear, the clients are very appreciative of the opportunity to discuss their problems with someone who is willing to listen and give some feedback. I also enjoy working with the dedicated MBA and Marquette Law School staff, and with the students and other attorneys who volunteer at the clinic; we work in a very cooperative manner to find the best answers and referrals for the clients who seek our help. I will on occasion also agree to represent a client outside of the walk-in clinic when there is an opportunity to help solve a problem through some follow-up work."

In addition to his work at the MJC, Pete has served as a volunteer mediator in about 20 Milwaukee County Circuit Court foreclosure actions. He also serves as President of the Legal Aid Society's Board of Directors. He has represented the Society and several of its staff attorneys as *pro bono* counsel in state and federal lawsuits in which they are occasionally embroiled. Foley & Lardner maintains a group of volunteer attorneys who regularly accept *pro bono* referrals from the Legal Aid Society, and Pete helps coordinate and oversee these matters.

From 1994 to 2009, Pete was repeatedly elected to and served as a volunteer member of the Mequon-Thiensville School District Board of Education, including six years as President of the Board.

For his exemplary and tireless commitment to serving his community, we salute Pete Stone.

Member News

Andrus, Scales, Starke & Sawall, specializing in intellectual property law, announced the addition of **Emily M. Hinkens**. She focuses her practice on domestic and international patent and trademark prosecution and enforcement.



Emily M. Hinkens

Peter J. White has joined Fox, O'Neill & Shannon as an associate. His practice involves taxation, corporate law, business start-ups, estate planning, probate, and trust administration.



Peter J. White

Grzeca Law Group, a full-service immigration law firm, announced the addition of two associates. **Mary Lynn Ferwerda** focuses on corporate immigration matters. **Ben Crouse** joined on the Family/Deportation Practice Group.

Gregg Herman of Loeb & Herman has been recertified as a specialist in family law by the National Board of Trial Advocacy for 2011-2016. He is one of only six attorneys in Wisconsin, and the only one in Southeastern Wisconsin, to be certified as a specialist in family law.



Gregg Herman

Nelson, Irvings & Waeffler announced that **Anne S. McIntyre** has joined the firm as an associate. She concentrates her practice in elder law, probate, and disability planning.

Reinhart Boerner Van Deuren announced the addition of two attorneys to its Health Care Practice. **Timothy J. Kamke** brings experience managing the legal issues associated with all aspects of the health care business. **Nicole S. Rosen** recently served as President of the Health Law Society at Marquette Law School.



Timothy J. Kamke

The firm also announced that two attorneys have joined its Litigation Practice. **Guy R. Temple** is experienced in advising senior organizational leadership on compliance with state and federal regulations, as well as trial preparation, including motion practice and discovery. **Jeremy D. Engle** has joined the Madison office. He has represented businesses and individuals in complex commercial and securities litigation, and has experience working with businesses in the hospitality industry.



Nicole S. Rosen



Guy R. Temple



Jeremy D. Engle

Message From the President

Attorney Michael J. Cohen, Meissner, Tierney, Fisher & Nichols



As Wisconsin residents, we are not always able to credibly say this, but this is just an exceptional time of year to be “livin’ in Wisconsin.” The weather is warm, but neither too warm nor humid, and there is just a hint of coolness in the

air to remind all of us that fall is just around the corner. For runners, such as those who participated in the First Annual MJC Run for Justice at Veteran’s Park on September 22nd (thank you for your support!), the weather is ideal. The same is true for those who enjoy cycling, hiking, walking or any other form of outdoor exercise. It always seems there is so much to try to squeeze in before winter smacks us in the face and reality sets in. This year we have the added bonuses of having the Super Bowl champions start the new season right where they left off, and having a professional baseball team actually contending for a National League pennant and potential World Series berth.

As will be the subject of more particular focus with our families in late November, there is much to be thankful for this time of year. This may sound somewhat campy (dare I say cheesy?), but I am also very thankful that I have had the opportunity and good fortune of becoming a lawyer and actually making a living doing what I do every day. Recently, I met with Chief Justice Shirley Abrahamson, Theresa Owens (the Chief Justice’s judicial assistant), Chief Judge Jeffrey Kremers, and MBA Executive Director Jim Temmer to discuss the public perception of the legal profession in general and how the courts and bar might work together to improve what is seen by many as a struggling image for our fine profession. The focus of our discussion was on outreach to the community. Chief Justice Abrahamson shared with us her vision of taking the outreach programs that already exist in various forms in our legal community and packaging them into a consolidated “Courts Connecting Community” program. The Wisconsin Supreme Court is working on a tool kit that will allow local courts and bars to organize their efforts to share information about the legal system and, where appropriate, particular legal subjects

that may be of interest to different groups in our diverse population. In the largest county in the state, reaching our vast community is a daunting thought, but there are also many opportunities out there for bench and bar alike to connect with the public in a positive way and inform it about what we do and how we do it. Chief Judge Kremers will be speaking more about some of these ideas, which are in their formative stages, at the Eighth Annual State of the Court Luncheon on Wednesday, October 12 at noon at the Wisconsin Club. If you have not already signed up for this great event, please do so. Also, the 2011 Wisconsin Solo and Small Firm Conference is October 27 through 29 at the Kalahari Resort in Wisconsin Dells. There are more than 32 educational and training sessions at this conference, and it is usually very well-attended.

Lastly, in keeping with my pledge at the Annual Meeting, we are continuing to focus our efforts on a plan for long term sustainability for the Milwaukee Justice Center. You will be hearing more about our annual giving campaign in the months to come as we target a launch date for next spring. In the meantime, thanks once again to the many of you who have donated time as volunteers, as well as money, to this very worthwhile program. As you may know (and in any event can read in these pages), the MBA Foundation recently received an award at the ABA Convention in Toronto for the success of the MJC. Again, there is much to be thankful for, but also much to do to going forward.

I look forward to seeing all of you at the State of the Court Luncheon!

Welcome New MBA Members!

Vincent Bauer
Emily Jane Bell
Melissa R. Beresford
Patrick C. Brennan, *Brennan Law Offices*
Eric Christopher Cormany, *Kim & Lavoy*
William T. Crowley
Jack L. Davila
Victoria L. Davis
Nathan DeLadurantey
Megan Olivia Eisch, *O’Neil, Cannon, Hollman, Dejong & Laing*
Daniel Albert Exner, *Cordell & Cordell*
Perry H. Friesler, *Law Offices of Perry H. Friesler*
Ryan Gehrke, *von Briesen & Roper*
Brittany C. Grayson
Denise Greathouse, *Michael Best & Friedrich*
M. Yehuda Handler, *Handler Law Office*
Michael Weisse Hughes
Kyle Jesinski
Justinian Koenings, *O’Neil, Cannon, Hollman, Dejong & Laing*
Christopher John Koppes
Robert Kuczynski
Leah M. Link-Michaelson, *Davis & Gelshenen*
Charles Maring, III, *Kmieciak Law Offices*
Amelia L. McCarthy, *Gass Weber Mullins*
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William L. Shenkenberg, *Mallery & Zimmerman*
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William R. Steinmetz, *Shellow & Shellow*
Kristyanne Thompson
Theresa Unger, *Ritz Holman, Certified Public Accountants*



CLE Calendar

Fall 2011

October 4, 2011

Estates & Trusts

Asset Protection Strategies

This seminar will survey a variety of techniques to consider when to integrate asset protection planning with clients' estate plans, with a focus on practical considerations.

Speaker: Robert A. Mathers, JD, CPA, ABV, PFS, Davis & Kuelthau

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

October 7, 2011

Bankruptcy

Impact of Lanning in Chapter 13 Cases

Speakers: Nathan DeLadurantey and Anton Nickolai, DeLadurantey Law Office

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

October 11, 2011

Corporate Banking & Business

IRC § 1031 – Tax-Deferred Exchanges as a Planning Tool

The presentation will include the basics of forward and reverse tax-deferred exchanges and the need to develop an exit strategy before buying real property.

Speaker: Miles Goodwin, O'Neil, Cannon, Hollman, DeJong & Laing

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

October 12, 2011

Environmental

Keeping Lenders Out of Trouble at Contaminated Properties

The session will cover Wisconsin's lender liability exemptions under § 292.21, Wis. Stats. The DNR works with lenders throughout the state on lending practices and foreclosure issues at contaminated properties. Examples will be given of mistakes and missed opportunities by lenders in taking advantage of the liability exemption. Suggestions for consultants and attorneys representing lenders will be provided.

Speaker: Dan Kolberg, P.E., Local Governmental Specialist with the DNR's Brownfields and Outreach Section in Madison

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

October 13, 2011

Civil Litigation

Topic: to be announced

Speaker: Robert Menard, Derzon & Menard

1.0 CLE credit

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

October 14, 2011

MBA Bench/Bar Probate Committee

Real Estate Issues in the Insolvent Estate or Guardianship

Speakers: Geoff Gnadt, Gnadt Law Office; James Collis, James E Collis JD; Commissioner Patrice A. Baker; Milwaukee County Circuit Court Judges—to be announced

12:30 – 1:00 (Lunch/Registration)

1:00 – 4:00 (Presentation)

3.0 CLE credits

October 17, 2011

Conceal Carry Law and the Impact on Property Owners

Speakers: Patrick M. Zabrowski, Foley & Lardner; Doris Brosnan, von Briesen & Roper

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

October 18, 2011

Intellectual Property

Topic to be announced

Speakers: Keith Heidmann and Richard Roche, Quarles & Brady

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

October 20, 2011

Taxation

Topic and speakers to be announced

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

October 24, 2011

Family

A View from the Bench

Speaker: Honorable Frederick C. Rosa, Milwaukee County Circuit Judge

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

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I'll have you know that Nathan practiced law ferociously right up to the end. He refused all distraction from this single-minded focus. He confounded his doctors and nurses with the conga line of colleagues who sought consultation with him while he was in hospital. He worked the phone from his living room chair while he recuperated from chemotherapy. He rarely wished to discuss his deadly illness, and had no use for ineffectual expressions of sympathy. There was not an ounce of quit in him.

My selfish lament is that I won't be able to turn to Nathan for guidance during my stewardship of this organization. When Robyn and I had dinner with Susan and Nathan just a few weeks ago, I told him I was counting on him as my go-to guy. He enthusiastically accepted the role and, being Nathan, launched a discussion then and there of how I should approach the task. Of course, he knew he wouldn't be around. I imagine he must have tolerated my characteristic myopia with inner bemusement, this one last time. At one point that evening, he asked me what it felt like to be a grandparent.

The memory of the example Nathan set will have to serve. It will have to serve us all. Nathan is gone from us, much too soon. The loss of this extraordinary lawyer and human being sorely diminishes us. We shan't see his like again.

— C.B.

Pro Bono Cocktail Reception:

Monday, October 17th
from 5-7 pm at the MBA.

Cocktails, appetizers and brief presentation re: *pro bono* work in Milwaukee.

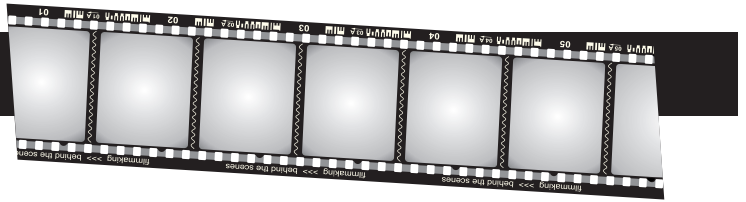
Free to attend

Contact Britt Wegner at
bwegner@milwbar.org to RSVP.

Sponsored by the Milwaukee Bar Association and Quarles and Brady.

The Reel Law

Attorney Fran Deisinger, Reinhart Boerner Van Deuren



Sleepers

1996; running time 143 min.

Since I started this series reviewing “legal” movies, I naturally have been given many recommendations of films to watch and review. *Sleepers* was suggested by a prominent Milwaukee lawyer. I won’t name him, but he is a former MBA president, a former judge, a stylish dresser, and Italian. (He would probably tell you the last two are redundant.) I mention this because it is easy to see why he likes this movie so much. It’s a story about four Italian and Irish boys—Shakes, John, Tommy, and Michael—who grow up in Hell’s Kitchen in the early ‘60s. They get into the usual adolescent mischief for such an environment in that era—and are pulled, but only gently it seems—between the twin poles of neighborhood adult authority: the kind but street-wise parish priest, Father Bobby, played by Robert DeNiro; and the local crime boss, played by the wonderful Italian actor Vittorio Gassman.

When a prank goes terribly awry, so do their lives. After stealing a neighborhood push cart leads to a bad accident, the four boys are sent to a state “home for boys” that looks like a prep school on the outside, but where a group of guards sadistically abuse the four friends, both physically and sexually.

The movie then flashes forward about 15 years. Shakes, the film’s narrator, works at a newspaper. John and Tommy have become vicious neighborhood criminals. Michael is, inexplicably, an assistant district attorney. Well, in any case, the movie doesn’t try to explain it. *Sleepers*, even at a longish 143 minutes, seems to be covering material that would really require twice that time for full exposition. The film is based on a book of the same name by Lorenzo Carcaterra (who claims it is a true story), and I suspect it is a very long book. And in fairness, most narratives that cover a long time span are difficult to condense to the time allowed in a standard-length film.

Anyway, back to the plot. Now grown and back in New York, the two criminals, Tommy and John, happen upon their worst tormentor from the reform school, a guard named Nokes (played by the peripatetic Kevin Bacon), as he is having dinner alone at a bar. After they remind him who they are,

they kill him on the spot. This sets up the third act of the movie, culminating in the trial of the two murderers. The artifice that drives the plot from this point forward is that Michael is the prosecuting district attorney. This is a set up, of course. Michael has asked for the case specifically so he can throw it and get John and Tommy acquitted, and he enlists Shakes and the mob boss in the plan.

Well-known actors portray the adult versions of the four friends. Ron Eldard and Billy Crudup competently play John and Tommy, but they have little to do. The bigger roles are Jason Patric as Shakes and a young Brad Pitt as Michael. Patric does not leave much of an impression, but Pitt has a nervy energy.

From a legal perspective, however, the most interesting character in the movie is the defense lawyer—played brilliantly by Dustin Hoffman—who is ordered by the mob boss to be the ying to Pitt’s yang in the trial scam. (The fact that Hoffman is introduced so late in the film underscores its trouble with scope.) In his introductory scene, which is quietly riveting, Hoffman tries unsuccessfully to beg off the assignment, clearly no longer confident of his trial abilities. But he eventually becomes the legal star of the trial when he cross-examines a friend of the murdered man—another of the sadistic guards from the reform school. Why is this man a witness? It’s the first key to the scam. Pitt calls him as a “character” witness for the murdered man specifically to set up Hoffman’s cross, which reduces the witness to a blubbing and broken man who confesses the crimes of the guards at the reform school. Needless to say, character witnesses are unheard of for murder victims, so the film gets low marks for evidentiary accuracy.

The second key to the scam is the most disappointing element in the film. John and Tommy need an alibi in order to be acquitted. Shakes goes to Father Bobby, reveals the abuse the four suffered at the hands of Nokes, and asks the priest to perjure himself by testifying that the two defendants were with him the night of the murder. Very little in the story to that point suggests that the priest would compromise his principles in this way, especially since he also knows that John and Tommy have murdered other people. But when he is called to testify, Father Bobby lies calmly and without any

hesitation. This is hard to comprehend, and perhaps morally repugnant, but the “movie crime” is at least as bad: it is a terrible waste of DeNiro. At no moment during his testimony do we get an inkling of any inner turmoil. He might as well be reading tax legislation aloud as lying under an oath taken on a Bible framed prominently in close-up as the priest rests his hand on it. An actor of DeNiro’s skill could have been fascinating to watch in such a scene, but all of the potential drama is drained by this curious choice.

The trial scam works, of course; the jury acquits John and Tommy, and the four friends have a cheery, beery reunion dinner. But we are told in end-of-the-film narration that John and Tommy eventually meet terrible deaths of their own, and that Michael quits his job as a lawyer to become a carpenter. If this story is true, as Carcaterra claims, perhaps we should be grateful about Michael’s career decision.

Overall, *Sleepers* is narratively messy, but at least there is some fine acting along the way. And director Barry Levinson, as usual, easily evokes earlier times in the first third of the movie. In fact, I liked that innocent first act, following the four friends as children in Hell’s Kitchen, much more than the courthouse dénouement.



Mission Statement

Established in 1858, the mission of the Milwaukee Bar Association is to serve the interests of the lawyers, judges and the people of Milwaukee County by working to:

- Promote the professional interests of the local bench and bar
- Encourage collegiality, public service and professionalism on the part of the lawyers of Southeastern Wisconsin
- Improve access to justice for those living and working in Milwaukee County
- Support the courts of Milwaukee County in the administration of justice

and

- Increase public awareness of the crucial role that the law plays in the lives of the people of Milwaukee County.

No Delay for Lucre or Malice¹:

the Pledge of Legal Aid in Milwaukee

Attorney Hannah C. Dugan

It is easy to rank the Legal Aid Society of Milwaukee, Inc. as the prime legacy of the Milwaukee Bar Association. The Society's 1916 founding marks the MBA's and Milwaukee's early commitment to legal aid, and the Society remains one of the oldest continuously operating legal aid societies in the nation. Its storied evolution—from social service agency to indigent defense provider to civil litigation counsel—includes notable influences of legislation and case law. The Legal Aid Society's story also includes decades of MBA commitment, a remarkable staying power, and a 95-year tradition of not charging attorney fees to low-income persons.

Currently, a petition to expand civil legal aid is pending before the Wisconsin Supreme Court. At an October 4, 2011 hearing, the court will consider “Petition 10-08 to Establish a Right to Counsel in Civil Cases” (“Civil *Gideon*”),² which pleads for court appointment of counsel at public expense for low-income persons in civil matters involving basic human needs. As the court contemplates the creation of a Civil *Gideon* rule in Wisconsin, it is appropriate to review the progression of the right to counsel in Wisconsin since its mid-19th Century beginnings. This article briefly recounts the historical efforts of the bench and bar, in Milwaukee and Wisconsin, to maximize poor people's access to the justice system.

The Backstory

The history of legal aid is the history of substantive areas of law such as bankruptcy and immigration law. Legal aid's history not only runs parallel to the development of the American legal profession itself, but also aligns with the profession's refinement of centuries-old principles of *pro bono publico* and millennia-old principles of equal justice.

Legal assistance to indigent persons, and its delivery systems, have been deeply informed and reformed by various historical periods and movements, as well as by legislation. In Wisconsin, influential movements include the labor movement, progressive movement, agrarian movement, and immigrant migrations of the late 19th and late 20th Centuries (which continue today). Key legislation includes the Worker's Compensation Act, the Soldiers' and Sailors' Relief Act, the Social Security Act, the Civil Rights Act, and the Americans with Disabilities Act.

This article focuses on the right to counsel, the early years of the 20th Century legal aid movement, the later 20th Century legal services programs, and some miscellaneous instances of legal assistance for Wisconsin's poor and disenfranchised.

Leaning Into the Right to Counsel

Since its first state constitution, Wisconsin has declared a right to counsel similar to the Sixth Amendment found in the United States Constitution.³ The prominence of the right is evidence that Wisconsin's commitment to legal representation is deeply rooted in its legal psyche. But almost as longstanding in Wisconsin's jurisprudence is that the costs of counsel for criminally charged indigents be borne by the government, as discussed 152 years ago in *Carpenter v. Dane County*.⁴

The right to counsel at government expense in criminal matters of all sorts is articulated in the landmark case *Gideon v. Wainwright*.⁵ While efforts in recent years have been undertaken throughout the country to establish a civil *Gideon* right, no right to counsel at government expense exists in all or even most civil matters.⁶

The Legal Aid Society Movement

The evolution of legal aid societies began with the American legal profession focusing on legal needs of poor people—beginning in the late 1800s and extending throughout the early years of the 20th Century, parallel to development of the legal profession and bar associations themselves.

The concept of free legal aid migrated to America from Germany. In 1876, the Germany Immigrant Society of New York City committed itself to the protection of German immigrants from exploitation. After gradually extending representation to non-German groups, the organization reconstituted itself as the Legal Aid Society of New York in 1890.⁷

In 1911, a key figure in the legal aid movement, Reginald Heber Smith of Boston Legal Aid, was instrumental in the creation of the National Alliance of Legal Aid Societies. Fifteen organizations joined together to form an umbrella group to direct the development of such societies. This organization evolved to become the National Legal Aid and Defender Association (NLADA). One of

Smith's successors at the NLADA was Wisconsin's first State Public Defender and subsequent dean of Marquette Law School, Howard Eisenberg.⁸

The early decades of the 1900s saw legal aid offices open in most major cities. By 1917, about 37 legal aid societies existed. The societies varied in missions, organizational models (e.g., government entities, private incorporation), and service models (e.g., social services agencies, stand-alone law firms, case referral models).

In Wisconsin, numerous legal aid societies have operated, the most prominent one being the Legal Aid Society of Milwaukee, Inc. A driving force in Wisconsin's legal aid movement was Professor John Rogers Commons, economics professor at the University of Wisconsin-Madison. In addition to Professor Commons, prominent Milwaukeeans worked for over half a decade to establish Milwaukee's Legal Aid Society. These included Victor Berger (socialist politician, Wisconsin Congressman, and husband of Meta Berger, the Society Board's first Vice-President); Emil Seidel (socialist Milwaukee Mayor from 1910 to 1912), Daniel Hoan (City Attorney and later Mayor in 1916 when the Society was founded), and William Kaumheimer (business lawyer and first President of Milwaukee's Legal Aid Society from 1916 to 1929). Originally the founders pursued an organizational model based on the creation of a municipal entity. After several failed attempts to pass such enabling legislation, the local movement's leaders opted to organize a legal aid society as a private corporation.

Three entities—the Milwaukee Bar Association, the Central Council of Social Agencies (predecessor of the United Way), and the City Club (succeeded in purpose by the current Public Policy Forum)—combined forces and a variety of motivations to recommend the founding of the agency. Its incorporation in February 1916 included a provision that each member of the Society pay \$1.00 per year. Such “dues” provided funding for its operations, which consisted of social workers screening needs and referring unresolved cases to the Society's “retained” counsel, Hannan, Johnson & Goldschmidt. The Society's first office was located in

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Easing the Burden on Parents with Developmentally Disabled Adult Children

Julie Turkoske, Britt Wegner, and Honorable Michael Dwyer

Jamie was brought to Froedtert Hospital by her parents. She needed surgery to implant an anti-seizure device called a vagal nerve stimulator. Jamie's parents readily consented to the surgery on her behalf, but when the admitting physician reviewed her chart, she realized that Jamie was 19—an adult under the law. Jamie suffered from a disease that caused frequent seizures and profound developmental delays. She was unable to understand treatment options or to make decisions about her care. Her parents had always taken care of her, but now they were told they needed to be appointed as her guardians in order to continue to make major life and medical treatment decisions on her behalf. Jamie's parents were not well off financially and their care of Jamie was very time-intensive, making it difficult for both parents to hold full-time employment. A guardianship, they were told, could cost thousands of dollars, and would require representation by an attorney and an assessment by a physician or psychologist.

often comes as a shock to parents who have children with profound disabilities. Because their young adult is unable to understand information and make choices related to health and finances, or to sign releases, parents of such a young adult assume that they will continue to make those decisions. The concept of filing for legal guardianship can sound absurd to a family member who has lovingly cared for his or her child for so many years. Moreover, most parents with a modest income struggle simply to meet their family's daily needs. When there is a young adult with profound disabilities in the family, those challenges are exacerbated. It can become overwhelming to think about funding to hire an attorney and navigate the guardianship process. For this reason, many parents of children with profound special needs in Milwaukee County do not pursue guardianship when their young adult turns 18.

The Milwaukee County Guardianship Task Force has been working to address this issue since 2009. The Guardianship Task Force is directed by Attorney Rock Pledl;

Dan Idzikowski, Assistant Dean for Public Service at Marquette Law School; and Milwaukee County Circuit Court Judge Michael Dwyer. The Task Force brought together private attorneys, public school officials, social workers, Milwaukee County Division of Disability Services administrators, Corporation Counsel, and probate court personnel. Together, they designed the Guardianship Assistance Project (GAP), through which low-income families could petition for guardianship for their children with profound cognitive deficits at low or no cost. GAP is modeled on the Children's Hospital of Wisconsin's Guardianship Clinic. A group of attorneys from Whyte Hirschboeck Dudek and Quarles & Brady, as well as Marquette Law students, provide *pro bono* legal services to qualifying families under

both programs.

GAP is administered on a volunteer basis by Julie Turkoske, a Family Support Specialist at the Southeast Wisconsin Center for Children and Youth with Special Healthcare Needs. After receiving a referral from the special needs transition coordinator at a child's school district, Turkoske screens the case to ensure there is no dispute about the need for guardianship and that the proposed guardians meet GAP's income limits. The idea behind the project is to create a referral network through local school districts, so that students who are likely to need a guardian when they reach the age of majority can be identified and brought into the process at age 17½, with the goal of preventing any discontinuity in legal decision-making authority.

GAP is designed to assist families with incomes up to 250% of the federal poverty level, which need guardianship of young adults (other than those who are regular patients of Children's Hospital and Health System) with profound cognitive deficits. For families below 185% of the poverty level, Turkoske and other volunteer case managers assist the family in gathering the required documentation and psychological report. She then schedules them with one of the two law firm *pro bono* coordinators, who firms provide legal counsel and prosecute the guardianship petition. Parents who have received this assistance have expressed extreme gratitude for the help they received. They reported that the process was much less frightening and complex than they had imagined it would be, and that young adults were more easily able to access services that required legal consent.

Yet, this phase of the project is only able to help a small percentage of families who need legal assistance. Thus, Judge Michael Dwyer reached out to Britt Wegner, Director of the Milwaukee Bar Association's award-winning Lawyer Referral and Information Service (LRIS), to determine whether the MBA's Modest Means Panel could accommodate an additional panel willing to assist qualifying families up to 250% of the federal poverty level that sought adult guardianships. The MBA agreed. These families will still be screened by Turkoske, and upon qualification, will be referred to

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The need for legal guardianship of an adult

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Wisconsin's Concealed Carry Law Triggers Troubling Legal Issues

Attorney Grant Huebner, Milwaukee County District Attorney's Office

On July 8, 2011, Wisconsin Act 35 was signed into law. The Act's provisions relating to carrying a concealed weapon take effect on November 1, 2011. Act 35 has been the subject of much debate. This article takes no position on the benefits or harms that may occur. Rather, the following are observations of several of the changes to Wisconsin law:

I. Weapons That May Be Carried Concealed

With a valid concealed carry license, an individual may lawfully carry a handgun, electric weapon, knife, or "billy club." Wis. Stat. § 175.60(1)(j). By definition, machine guns, short-barreled shotguns or rifles, and switchblade knives may not be carried, with or without a permit, and those who do so are subject to the preexisting criminal penalties. Sec. 175.60(1)(bm) and (j).

The effects of the new law on electric weapons—for example, "tasers"—are noteworthy. Prior to Act 35, possession of an electric weapon, with narrowly defined exceptions, was punishable by up to six years imprisonment. Now, with a valid conceal carry license, an individual may carry an electric weapon on his or her person. Additionally, a person may, without a license, possess an electric weapon in his or her home or place of business, or on land that he or she owns, leases, or legally

occupies. Lastly, those without a license may legally transport an electric weapon as long as it is enclosed within a carrying case. These changes now allow conduct that previously had been felonious. Interestingly, the sale of an electric weapon to a non-licensee remains prohibited. Therefore, while a non-licensee can legally transport an electric weapon and possess it on his or her own property, no one can legally sell one to a non-licensee in Wisconsin.

II. Restrictions on Obtaining a Concealed Carry License

Pursuant to § 175.60(3), the Wisconsin Department of Justice shall issue a license unless the applicant is:

- under 21
- prohibited by federal law from possessing a firearm
- prohibited by Wisconsin law from such possession
- released on either misdemeanor or felony bail and subject to a no-weapons order
- not a Wisconsin resident
- provides no proof of training

Thus, providing that an applicant meets all of the criteria, the Department must issue that applicant a concealed carry license. The restrictions contained in § 175.60(3) become interesting when one looks at the Act's

provisions for revocation and suspension of a license.

III. Revocation and Suspension of the License

Revocation and suspension of the concealed carry license are treated in § 175.60(14). Sub. (14)(a) provides that the "department shall revoke a license issued under this section if the department determines that sub. (3)(b), (c), (d), (e), (f), or (g) applies to the licensee" (italics added). As discussed above, sub. (3)(b) through (g) delineates all of the limitations on obtaining a license. Thus, if a licensee falls into any of those statuses, the Department of Justice must revoke the license.

Attention is called to paragraphs (d) and (e) of sub. (3). These paragraphs deal with an individual out on bail and subject to a no-firearms order as a condition of bail. Therefore, it appears that the Department must revoke the license if the licensee becomes subject to those orders as a condition of his or her bail. Sub. (14)(am), however, states that the Department shall *suspend* the license if the licensee becomes subject to a weapons prohibition as a condition of either misdemeanor or felony bail. In this one instance, the new concealed carry statute appears to prescribe different consequences.

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Golf Outing 2011

"Hey, guys, can we split this down the middle?": Judge William Callahan, U.S. District Court, John Remington of Quarles & Brady, and Jim Fergal of Habush, Habush & Rottier talk before the start of the outing. Photo courtesy of Wisconsin Law Journal →



Reviewing the troops: Bill Harbeck of Quarles & Brady looks for his assigned cart. Photo courtesy of Wisconsin Law Journal →



No reversals in sight: Appeals Court Judge Kitty Brennan and Wisconsin Supreme Court Justice Annette Ziegler take a break to pose for the camera. ↓



Waiting anxiously for that first customer: Staff and volunteers prepare for the 23rd Annual MBA Foundation Golf Outing. ↑

"No, I won't hit from the ladies' tee." Wisconsin Law Journal Publisher Ann Richmond golfs with Byron Conway of Habush, Habush & Rottier. →



Milwaukee Justice Center Cited as Partnership for Success

The Milwaukee Justice Center recently earned national recognition when the MBA Foundation received the inaugural LexisNexis Partnerships for Success Award at the 2011 ABA Annual Meeting in Toronto. In partnership with LexisNexis, the National Conference of Bar Foundations' newest award honors bar foundation initiatives that make a significant impact in their communities concerning issues on which lawyers are uniquely positioned to lead. An underlying goal of this foundation initiative is to establish new partnership opportunities, or leverage existing ones, through the meaningful involvement and support from an affiliated bar association and other allied members of the legal community. The Milwaukee Justice Center is a prime example of such a partnership.

The MJC illustrates the core element of the NCBF's guiding principles: lawyers coming together, in ways only they can, for the public good. The catalyst behind the Milwaukee Justice Center was a simple anniversary. The Milwaukee Bar Association turned 150 in 2008. Several years prior to that date, bar

leaders started to plan our sesquicentennial. The overwhelming sentiment was to celebrate this important event with an equally important public service project. At the same time, area courts, public legal service providers, and area nonprofits were requesting assistance from the MBA and MBA Foundation with the growing problem of the lack of legal services for people who cannot afford to hire attorneys.

Partnerships work when each member dedicates its own unique resources towards a common goal. The MBA had access to more than 2,300 potential volunteers, Marquette University Law School had hundreds of law students, and Milwaukee County offered a physical location (cost free) and an employee. Our foundation was asked to raise funds in support of the lead Justice Center position and funds for any physical improvements.

The MJC's impact on both the justice system and the larger community is eye opening. During its first full year of operation, the MJC served 7,541 clients. 304 volunteers donated a total of 7,058 work hours. The



Diane Callahan, Director, Associations Marketing for LexisNexis; James Temmer, Executive Director, Milwaukee Bar Association Foundation; and Tom Tinder, NCBF Immediate Past President, at the 2011 Joint Annual Meeting Awards Luncheon of the National Conference of Bar Presidents, National Conference of Bar Foundations, and National Association of Bar Executives.

total value of volunteer services was \$630,615. By working together, the MBA, MBA Foundation, Milwaukee County, and the Marquette University Law School have developed a successful court-based legal service program. The Milwaukee Justice Center exemplifies a Partnership for Success.

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A Fond Tribute to Dave Cannon

Attorney Franklyn M. Gimbel, Gimbel, Reilly, Guerin & Brown

I first met David Cannon on the corner of North Franklin and East Knapp Street in the fall of 1958. He was a passenger in the Green Bus, which traveled west down Wisconsin Avenue past 11th Street, the location of Marquette law school. Actually, Dave got on the bus near his home on Lafayette Place, and I lived in an apartment with a young wife at 1040 East Knapp Street. During the next two years we experienced the rigors, stresses, and adventures of law school, which during the 1950s was far different than it is in the 21st Century. There were no computers or cell phones to do research, take and keep notes, or communicate with others. We actually had to read books, write in long hand, meet face-to-face with folks, and use land line phones from home. Marquette was in tired old quarters, but the facilities were adequate for the purpose of preparing us to be lawyers.

Following our graduation in 1960, our paths crossed many times professionally, while at the same time our friendship grew and flourished. Dave started out with his brothers in a small neighborhood law firm, and then

moved into the Milwaukee County D.A.'s office, having been appointed by then-Governor Warren Knowles. As a Republican appointee, his tenure was short lived in Democratic-leaning Milwaukee County. Shortly after he lost that job to E. Michael McCann, he was appointed United States Attorney for the Eastern District of Wisconsin by then President Richard Nixon (one of Nixon's good decisions). Both as District Attorney and as United States Attorney, Dave hired and directed many young lawyers who developed into the best of the bar. Dave's leadership style, much like his lifestyle, was to allow those around him to develop in their own manner. Dave encouraged and supported his minions without imposing his brand. When Dave left the U.S. Attorney's Office, he went to Michael Best & Friedrich, which was a growing corporate law firm. At Michael Best, Dave started a litigation section and guided it to prominence.

Dave Cannon enjoyed a great reputation as a mentor, trial lawyer, bar activist (he served as President of the MBA), and community asset, but more importantly he was a husband,

father, grandfather, and friend. The absolute consistency in each and every role of his remarkable life was his selflessness. Dave Cannon always made you feel as though your issues were more relevant than his involvement in resolving them. Yet resolve them he did.

I will always be indebted to Dave Cannon for the role he played in bringing my son Josh into Michael Best after Josh concluded a term as law clerk for federal judge Terry Evans (who also tragically passed away recently), and mentoring Josh into a fine lawyer with Dave Cannon ethics and integrity. The lawyers in the greater Milwaukee community lost a treasured asset on July 26 when Dave Cannon lost his two-year battle with cancer.

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next year...**

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A Fond Tribute to Judge Terence T. Evans

Honorable Gary A. Gerlach, Gunta & Reak

The passing of Judge Terry Evans has been devastating for his family, friends, our legal community, and our community at large. As a close friend and colleague for over 40 years, I have had the good fortune to be a recipient of his profound influence both professionally and personally. Soon after he was appointed to the Seventh Circuit Court of Appeals, I asked him if he had any reservations and he said, "Well, it is a bit unnerving, knowing that some of the judges on the court have written more books than I have read." Typical Terry—so unpretentious. As we all know, his scholarship, common sense, humanity, wit, and wisdom resulted in him becoming one of the top jurists in the country. He was not only a Major Leaguer in all aspects of his life; he was and always will be a Hall of Famer.

For all of us, a piece of our lives is missing that will not be replaced. Rather than feel badly for ourselves because we will no longer have the wonderful role model Terry was in

our midst, I would like to make a suggestion. Of all of the attributes that made him truly a man for all seasons, the air of civility that emanated from him, both inside and outside of the courtroom, is something that we all can pursue. As a tribute to Terry, let's make a vow to argue our cases, debate the issues, support our candidates, and pound our fists on the table in a respectful and civil manner, and at the end of the day, together, head to the 19th hole for a beer and enjoy each other. Terry will be there.

P.S.: Speaking of the 19th hole, Terry was one of the founders of what is now the annual MBA Golf Outing. I would at this time respectfully move the MBA powers that be to rename the event to the Honorable Terence T. Evans MBA Golf Outing. Is there a second to the motion?

Editor's Note: *Seconded.*

MJC Welcomes New Additions to Staff

The Milwaukee Justice Center is thrilled to welcome two new additions to its staff as of September 2011: Ayame Metzger and Joe Riggenbach.

Ayame Metzger joins the MJC team as Legal Supervisor for the Self Help Desk. Ayame is a graduate of Indiana University Maurer School of Law, where she received the *Pro Bono* Award twice. Recently the *Federal Communication Law Journal* recognized Ayame for outstanding participation as Notes Editor. She also studied at Illinois State University with a focus on special education, and has worked in the Chicago Public Schools.

With the addition of Joe Riggenbach as a Program Director, the MJC continues its partnership with Public Allies Milwaukee. Public Allies Milwaukee is focused on advancing new leadership to strengthen communities, nonprofits, and civic participation. Joe will be working at the MJC and participating in several projects throughout the city with his class of fellow Allies. Joe is a recent graduate of UWM, and has previously worked with the ACLU on civil rights education programs for young people. He has also volunteered with the YWCA's youth leadership and anti-oppression program, Camp Everytown. Joe is on the Board of Directors of the Cream City Foundation, a LGBT philanthropy organization in the greater Milwaukee area.

The MJC is delighted to have Joe and Ayame join its staff. With their contributions, the MJC will continue to expand civil legal assistance to Milwaukee's low-income, unrepresented litigants.

MJC Volunteer Spotlight: Miles Goodwin

Miles Goodwin, originally from Dallas, Texas, is a resident of Wauwatosa. He earned his undergraduate degree in Psychology from Marquette University, after which he proudly served two years in the U.S. Armed Forces. He then continued his education, earning his law degree from Marquette University Law School. Miles is Senior Counsel specializing in commercial real estate at O'Neil, Cannon, Hollman, DeJong & Laing. When he is not at work or volunteering at the Milwaukee Justice Center, Miles enjoys riding his Harley, blogging about individual investment

at WallStreetSmarts.org, spending time with his family, and practicing his spoiling techniques (he is a new grandfather). Miles answered a half dozen questions about his work at the MJC:

In what capacity do you volunteer at the MJC?

I got involved through my firm, which provides volunteer attorneys for the Milwaukee Justice Center Brief Legal Advice & Referral Clinic. As a volunteer, I help individuals who come into the clinic with questions, and help steer them in the right direction.

What compels you to volunteer?

I wanted to get involved because I feel that this is a great program. It provides much needed help to people who would otherwise have limited access to legal assistance.

Has volunteering been a rewarding experience for you?

It is rewarding in that when people stand up and thank you as they're leaving, you know they truly mean it. You get to see people who come in troubled and worried leave calm and with satisfaction.

What has been challenging?

The challenge is in trying to assist people in areas of law in which I have little experience. However, the folks at the MJC provide the volunteer attorneys with back

up. This experience has made me more knowledgeable in areas of law outside of my practice.

Why do you feel pro bono work is important?

Pro bono work is the duty of an attorney; we should be giving back to people in our community who would otherwise not have legal assistance.

Do you have any advice for those who are considering volunteer work at the MJC?

I don't necessarily have advice, but if you are considering volunteer work, you should know that you will get a lot more out of it than what you put in.

Happy One Year Anniversary to the MBA's Mentoring Program!

For details or to join contact Britt Wegner at bwegner@milwbar.org

Thank you to all of our participants!

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Too bad last Friday was the last day to file the Bergstrom motion.

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* American Bar Association Standing Committee on Lawyers' Professional Liability. (2008). *Profile of Legal Malpractice Claims, 2004-2007*. Chicago, IL: Haskins, Paul and Ewins, Kathleen Marie.

A Guide to Wisconsin's Lesser Municipal Offices

Attorney Douglas H. Frazer, DeWitt Ross & Stevens



My service on the Fox Point Village Board has prompted a closer scrutiny of the Wisconsin Statutes concerning municipal matters.

What stands out are the lesser statutory positions still available for office seekers at, shall we say, the margins. These include the offices of marshal, constable, and weed commissioner. Each evokes a certain element of nostalgia and whimsy—and fantasies of the resplendent uniform that the officeholder might wear for the Fourth of July parade.

The position with perhaps the most present-day utility is weed commissioner. This post has been on my mind, and it's not because of *cannabis sativa*—medical or otherwise. Weeds are on my mind because I am the new Village of Fox Point Weed Commissioner. Many municipalities, in fact, still fill this post.

Permit me to share my credentials. Under Wisconsin law, the chairperson of each town, the president of each village, and the mayor of each city may appoint a weed commissioner. Wis. Stat. § 66.0517. A weed commissioner “shall investigate the existence of noxious weeds in his or her district.” If a person in a district neglects to destroy noxious weeds, the weed commissioner is authorized to take care of the problem. The weed commissioner may enter upon private property “and cut or otherwise destroy noxious weeds without being liable to an action for trespass or any other action for damages resulting from the entry and destruction if reasonable care is exercised.” How about that for extraordinary powers?

A weed is a plant in an undesired place that grows and reproduces aggressively. The species that are particularly injurious to people, animals, agriculture, or horticulture are designated as noxious weeds. Under Wisconsin law, noxious weeds include *cirsium arvense* (Canada thistle), *convolvulus arvensis* (field bindweed, also known as creeping Jenny), and *euphorbia esula* (leafy spurge). Wis. Stat. § 66.0407. Wisconsin Statutes define two species as “nuisance” weeds: *lythrum salicaria* (purple loosestrife or hybrids thereof) and *rosa multiflora* (multiflora rose). Wis. Stat. § 23.235. Some municipalities enact ordinances that extend

the list of “banned” weeds to include certain invasive or allergen-producing species such as ragweed, garlic mustard, buckthorn, and bush honeysuckle. State law permits the municipality to charge an offending resident the cost of noxious weed removal. As we see, Wisconsin municipalities take their stewardship of flora seriously.

Most weed commissioners, it appears, prefer in the first instance education rather than aggressive law enforcement—unless the appointing official has designs to use the weed commissioner as a hatchet man. This is, anecdotally, known to occur. Get on the wrong side of the town board chairman and the weed commissioner is dispatched to investigate the existence of noxious weeds on your property. Primitive, yes—but effective.

The office of marshal evokes the Arizona Territory of the 1880s. Historically, marshals were appointed or elected police officers of small communities with similar powers and duties to that of the police chief, generally with powers ending at the municipal border. In Wisconsin, only villages may appoint or elect marshals. Wis. Stat. § 61.28 states that a village marshal “... shall possess the powers, enjoy the privileges, and be subject to the liabilities conferred and imposed by law upon constables, and be taken as included in all writs and papers addressed to constables... and arrest with or without process every person found in such village engaged in any disturbance of the peace or violating any law of the state or ordinance of such village.” The office of marshal in Wisconsin, research suggests, may have gone the way of Wyatt Earp.

Constables, on the other hand, have more enumerated powers. These include serving process; executing orders or warrants; attending sessions of the circuit court when required by the sheriff; passing along to the district attorney information concerning trespasses on public lands; impounding cattle, horses, sheep, swine and other animals at large on the highways; and prosecuting all violations of law. Interestingly, a 1979 opinion by the League of Wisconsin Municipalities (Police # 274) concludes that the inherent powers and jurisdiction of the offices of marshal and constable are identical.

The development of modern municipal police forces and county sheriff departments has supplanted the role and utility of these

peace officers. For example, a town in Door County not so long ago had a constable who took his law enforcement duties seriously. He attached a rooftop red light to his private car and pulled over a vehicle for speeding; the stop, however, occurred outside the town boundary. The driver, a sheriff's deputy, questioned the authority and jurisdiction of the constable—and threatened to arrest the constable for false arrest and impersonating an officer. The constable, thinking on his feet, let the deputy sheriff off with a warning. Word made its way back to the town board. That town soon eliminated the position of constable.

Still, a handful of Wisconsin municipalities continue to retain and fill the office of constable. These include the Town of Black Wolf, the Town of Rock, the Town of Cedarburg, the Town of Dunkirk, and the Town of Baileys Harbor. The principal responsibility of these peace officers involves investigating and responding to issues involving creatures with four legs—i.e., animal control.

Until recently, village presidents and trustees were—or at least had the authority to masquerade as—peace officers, too. “The president and each trustee shall be officers of the peace, and may suppress in a summary manner any riotous or disorderly conduct in the streets or public places of the village, and may command assistance of all persons under the same penalty for disobedience...” Wis. Stat. § 61.31(1). The legislature eliminated this provision in 2009—a change, to those of us who dream, for the worst.

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America Invents Act Becomes Law

Attorneys Richard L. Kaiser and Alan C. Cheslock, Michael Best & Friedrich

President Obama signed the America Invents Act (H.R. 1249) into law September 16, 2011. The Act significantly changes several aspects of U.S. patent law. Following is a brief summary of the substance and effective dates of some key provisions of the Act.

First-to-File – effective March 17, 2013

The Act moves the U.S. from a first-to-invent system to a first-to-file system. Any third-party prior art available before the patent application filing date can be used to reject the application. However, a disclosure of the invention by the applicant cannot be used to reject the application if the application was filed within one year of the disclosure. Any application filed before this provision goes into effect will be examined under the current first-to-invent system.

Prioritized Examination – effective September 26, 2011

For an additional \$4,800 fee (\$2,400 for small entities), an applicant can file a request to have the application examined out of turn.

Fee Increase – effective September 26, 2011

Ten days after enactment, there will be a 15 percent increase in almost all U.S. Patent Office fees, including filing, examination, extension, and maintenance fees.

Post Grant Review – effective September 17, 2012

A new post grant review system will expand the ability to challenge the validity of granted patents. The Act provides several options, outlined briefly below, to challenge patents,

with various time frames and limitations as to the grounds for the challenge:

- *Post Grant Review – within nine months of patent grant for challenges on nearly any ground, but only available to patents issued from applications filed on or after March 17, 2013*
- *Inter Partes Review – more than nine months after patent grant for adversarial challenges based on prior art patents and printed publications*
- *Ex Parte Reexamination – any time after patent grant for non-adversarial challenges based on prior art patents and printed publications*

The details of the new system must be established by the U.S. Patent Office within one year of enactment. Look for updates on the new rules in future editions of the *Messenger*.

Effective immediately upon enactment, requests for *inter partes* reexamination will no longer be granted upon a showing of a “substantial new question of patentability.” Rather, the standard for determining whether to grant the request will require the requestor to show “a reasonable likelihood that the requester would prevail with respect to at least one of the claims challenged in the request.”

Transitional Post Grant Review for Business Method Patents – effective September 17, 2012

The U.S. Patent Office must issue regulations establishing and implementing a transitional post grant review proceeding for review

of the validity of business method patents. Petitions for post grant review under the transitional review proceeding can only be filed by persons who have been sued for infringement or have been charged with infringement of the patent for which review is requested.

Pre-issuance Prior Art Submissions by Third Parties – effective September 17, 2012

A third party will be able to submit prior art publications for consideration during prosecution of an application if the prior art is timely submitted. The third party will have until the later of (1) six months after the date of publication of the application, or (2) the date of the first rejection. If a notice of allowance is issued before either of the foregoing events, the third party will no longer be able to submit prior art. Therefore, third parties should not delay in submitting relevant prior art.

False Marking – upon enactment

The Act no longer allows every person to bring a false marking lawsuit under 35 U.S.C. § 292. Rather, false marking lawsuits are limited to those filed by the United States or by a competitor who can prove a competitive injury. Also, marking a product with an expired patent that covered the product is not false marking. This change applies to any lawsuit pending on or after the date of enactment.

Virtual Marking – upon enactment

A patent article can be marked with the word “patent,” together with an address of a posting on the Internet that associates the patented article with the number of the patent.

Prior User Defense – available to all patents issued on or after enactment date

The Act provides a defense to infringement based on prior commercial use if the accused infringer can show a reduction to practice and commercial use at least one year before the effective filing date of the asserted patent.

Tax Avoidance Strategies – upon enactment

Tax avoidance strategies are defined as within the prior art for both existing patents and pending applications. In other words, tax avoidance strategies are not patentable and patents directed to tax avoidance strategies are not enforceable.

Judge Dennis Barry Championed the Cause of Juvenile Justice

The Honorable Dennis J. Barry, a Racine County Circuit Judge, passed away August 18, 2011. Judge Barry graduated from Lawrence University in 1969 and from Marquette University Law School in 1973. He began his law career in Kenosha as an Assistant District Attorney, and moved on to private practice with the Racine law firm of Thompson & Coates. He was elected as Racine County District Attorney in 1978. In 1980, he was appointed to the bench by Gov. Lee Sherman Dreyfus, and ran unopposed in every election thereafter, serving as judge for 31 years. Judge Barry served

as chairperson of the Wisconsin Juvenile Justice Study Committee in 1994 and 1995, and his recommendations led to the creation of the Juvenile Justice Code (Chap. 939 of the Wisconsin Statutes). Among his many professional and personal honors, he was named “Judge of the Year” by the State Bar of Wisconsin in 1997, and received a Meritorious Public Service Award from the Wisconsin Justinian Society Lawyers in 2000. Judge Barry is survived by his wife, Joan, daughter Rebecca Barry (Dr. Derek) Olson, and son Kevin.

Legal Aid continued from p. 9

offices “707-8 Merchant and Manufacturers Bank Building, 214-220 West Water Street, Phone Grand 519.”⁹

The following year, 1917, the American Bar Association delegates adopted a resolution urging state and local bar associations “to foster the formation and efficient administration of legal aid societies for legal relief work for the worthy poor, with the active and sympathetic cooperation of such associations, and that attorneys generally should be urged to give such societies their moral and financial support.” In 1923, the State Bar appointed a committee to address this charge.¹⁰

The Wisconsin State Bar Association’s legal aid study committee reported to the Bar at its 32nd annual meeting in Eau Claire in June 1925. The report argued that legal aid “embraces not only the furnishing of lawyers’ services to the poor (the work of organizations) but also the adoption of the administration of justice.” It reported as examples of justice system improvements not only courts of conciliation, but also certain aspects of the rules of procedure. The committee boasted of Milwaukee Legal

Aid’s role in establishing the Small Claims Court of the City of Milwaukee—another phenomenon sweeping across the nation to assist poor persons’ access to justice.

The committee, while recognizing the varied structures of legal aid societies, identified for the bar three dominant legal aid models that had evolved. The “Social Agencies Cooperative Method,” on which Legal Aid of Milwaukee was modeled, included social worker screening of cases, and assistance until a case required referral to a lawyer. This “method” gradually would change as the legal profession evolved. In 1930, the Society appointed its first attorney to serve as Superintendent, and in 1935 its first staff attorney. In 1939, the Society’s first clinical program began with two students from University of Wisconsin-Madison, and in 1950 Marquette Law School’s clinical programs began at the Society. The Milwaukee Legal Aid delivery model dramatically changed when it became a nonprofit law firm in 1956.¹¹

By the middle of the 20th Century, virtually every major U.S. metropolitan area had some kind of legal aid program.¹² This patchwork system of legal aid fell far short of meeting the legal needs of poor people.

The legal aid programs’ combined budgets totaled \$5.3 million and their combined legal staffs totaled 400 full-time equivalents. In 1963, the ratio of legal aid lawyers to eligible poor persons was 1 to 120,000.

Many areas of the country had no program at all, and most had resources stretched so thinly that services were very limited and often perfunctory. Nearly 45 years after the ABA first adopted legal aid as a goal, the movement remained a matter of private charity. Services were provided on a purely individual basis, with no effort to address the fundamental systemic problems disproportionately affecting poor people.

The Legal Services Response

The next phase of civil legal assistance focused on legal services for the poor, as distinguished from the legal aid movement. In the early 1960s, the Ford Foundation began to fund demonstration projects based on an emerging model of civil legal assistance: a model of multi-service agencies based on a philosophy that legal services should be a component of an overall anti-poverty effort and should address social reform.¹³

In late 1964, the federal government rolled out its “War on Poverty,” and Office of Economic Opportunity Director Sargent Shriver announced that, although the Economic Opportunity Act did not explicitly so provide, the agency intended to offer legal aid in its “supermarkets of social services.” The OEO Legal Services Program was born. In its first two years, the OEO program increased the nation’s investment in civil legal services for the poor eightfold.

The legal services model under the OEO guidelines distinguished the new format of “legal services” from traditional “legal aid.” Unlike legal aid organizations, boards of local OEO programs included representatives of the client base. OEO grantees agreed to (and even were mandated to) provide representation not only to persons but also to poor people’s organizations; service in all areas of the law (other than criminal defense); and advocacy for reforms in statutes, regulations, and administrative practices. Additionally, OEO programs deemed preventive law and client education essential activities.¹⁴

Of the 130 legal services program grants that OEO awarded by the end of 1966, one was received by the State Bar of Wisconsin to create Judicare of Wisconsin. In 1967, another grant was awarded to launch the legal services firm that would eventually become Legal Action of Wisconsin, Inc.¹⁵ As their designers intended, the new local legal services programs soon brought about major changes in the circumstances of low-income Americans and Milwaukeeans, as impact cases and advocacy were undertaken in the areas of immigration, public welfare, and court access.

Perhaps inevitably, legal services successes (especially those involving litigation against government practices) led to efforts by Congress and even by OEO to curtail the work of legal services programs. More pointedly, political interference threatened the missions and operations of many local programs.

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The basic idea of the Legal Services Corporation—an entity independent from the Executive Branch—first surfaced in January 1969. The Nixon Administration, initially lukewarm to the idea, by the end of 1970 reversed course and signaled an interest in creating some sort of independent authority to take over the OEO Legal Services Program.¹⁶ In early 1974, Congress finally agreed to a compromise authorizing the creation of the Legal Services Corporation in a bill that President Nixon signed—the last piece of legislation he signed before he signed his letter of resignation.¹⁷

The first LSC Board appointed by President Gerald Ford in 1975 assumed control of the Legal Services Programs from the OEO. In 1977, the Carter Administration LSC Board appointees included Hillary Rodham Clinton, who later served as LSC President. During her tenure, LSC experienced its greatest period of expansion—eventually reaching “minimum access,” which was the goal to have a legal services lawyer for every 5,000 poor persons. Due to severe cutbacks during the 1980s and 1990s, the LSC budget has never again approached that level of representation.¹⁸ Apart from severe funding cuts, LSC lawyers faced increasing practice and program restrictions, regulation, and

new LSC Board appointments hostile to the LSC’s very purpose.¹⁹

With the 1992 election of President Clinton, legal services grantees anticipated an end to the long period of insecurity and inadequate funding. The 1994 congressional elections, however, again threatened elimination of the LSC.²⁰ One result was State planning efforts, encouraged by LSC, which sought to increase and diversify state, local, and private funding for legal services, as well as to expand *pro bono* efforts. Since the beginning of the new century, a major effort has been devoted to encouraging mergers and consolidation of LSC-funded programs into statewide and regional providers. In Wisconsin, such consolidations took place among Legal Action, Western Wisconsin Legal Services, and Legal Services of Northeastern Wisconsin—all previously independent LSC grantees.²¹ In Milwaukee, the Legal Aid Society refocused and increased its impact litigation and class actions to address issues that LSC providers, essentially, were prohibited from undertaking.

Access to Justice Through Pro Bono Representation

The *pro bono publico* ethic and tradition, deeply embedded in the legal profession, is outlined in the oath taken by every Wisconsin lawyer, who pledges to “never reject from

any consideration personal to myself the calls of the defenseless or oppressed or delay any person’s cause for lucre or malice.” SCR 40.15, Attorney’s oath.

The Legal Aid Society, Legal Action, and other nonprofit law firms and nonprofit law departments have benefited for years from “ad hoc” *pro bono* assistance. To accommodate a more formal *pro bono* process, however, in 1957 the Legal Aid Society established a panel composed of Milwaukee Junior Bar Association attorneys as the Volunteer Defender Program to represent indigent defendants accused of misdemeanors. Legal Action of Wisconsin also formalized its *pro bono* volunteer program in the Volunteer Lawyers Project, co-sponsored by the Milwaukee Young Lawyers Association in Milwaukee.²²

All of this history reflects attorneys engaging in the profession’s *pro bono* tradition. The development of Canons of Professional Conduct included the concept of *pro bono*. In the 1980s, the *pro bono* tradition was codified in the adoption of Rule of Professional Conduct 20.6.1. During the 1990s, some states chose to require mandatory reporting of *pro bono* hours. When the Wisconsin Supreme Court adopted a revision of the Rules of Professional Conduct in 2007, it

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Legal Aid continued from p. 19

rejected mandatory *pro bono* reporting, and adopted the ABA model *pro bono* rule almost in its entirety.

Since the 1980s, opportunities have emerged for *pro bono* advice and assistance at nonprofit and court-annexed programs to increase litigant access to the justice system. The Rules of Professional Conduct, however, raised concerns among conscientious attorneys about such *pro bono* activity, particularly with respect to conflicts of interest. To encourage the *pro bono* tradition, Wisconsin's revised 2007 Rules included SCR 6.5, Nonprofit and court-annexed limited legal services programs. The new rule provides a safe harbor provision for *pro bono* attorneys providing assistance at nonprofit and court-annexed programs.²³

During my tenure as MBA President (1999-2000), the MBA and the MBA Foundation laid the groundwork for a local court-annexed office for *pro bono* legal assistance to *pro se* litigants. The following ten-year collaboration among the MBA, Milwaukee County (the Clerk of Courts in particular), and Marquette University Law School led to the 2008 opening of the Milwaukee Justice Center in the Milwaukee County Courthouse. The Center is staffed principally by volunteers who assist *pro bono* attorneys in their service to *pro se* litigants wandering the courthouse and wondering how to access the justice system.²⁴

Miscellaneous Means to Increase Access to Justice and Legal Aid

The following areas of civil legal assistance all have their own history, and each has contributed to the history of access to the justice system.²⁵

- Most notable is the adoption of the 1963 Federal Poverty Guidelines (FPG), which provide an objective standard to assess eligibility for legal services and measure poverty over time. The FPG render the terms “worthy poor” and “deserving poor” irrelevant.
- The Wisconsin Supreme Court established the Wisconsin Trust Account²⁶ Foundation (WisTAF) in March 1986.²⁷ WisTAF, an incorporated entity, is the Badger State's version of the Interest on Lawyers' Trust Account (IOLTA) programs throughout the nation. IOLTA programs pool small trust accounts as a creative means to generate significant funds, and then distribute those funds to entities that serve poor litigants.²⁸

- Law school clinics have provided an important training ground for law students, while expanding representation and raising a new generation of *pro bono* and public interest lawyers.
- Nationwide, states have realized that investment in legal aid produces real dividends in their residents' quality of life, their courts' efficiency and effectiveness, and their coffers in the long run. In mid-2000s, Wisconsin began to invest in legal services with appropriations expeditiously funneled through WisTAF, but the commitment was curtailed in the most recent biennial budget bill.²⁹
- The Wisconsin Supreme Court created the Access to Justice Commission³⁰ in 2009, charging it “to develop and encourage means of expanding access to the civil justice system for unrepresented low income Wisconsin residents.” Wisconsin is approximately the 40th state in the nation to establish such a commission, and so it has many examples of issues and strategies involved in increasing access to justice statewide. The Commission, now incorporated as a nonprofit, arose from the State Bar's Access to Justice Committee and was recommended by the Bridge the Gap Study conducted by the State Bar.³¹ By court order, the Commission is funded by the State Bar for at least three years.³²

Conclusion

The 86-year old minutes of the State Bar meeting of 1925 record a message that has been repeated during all eras of legal aid: “there exists no single form of organization or method of administration which is suitable for all parts of the country, and probably no such uniform organization or method will ever exist.” Indeed, the history of legal aid is one of experimentation and of responding to the ever-changing landscape of poverty.

The 1925 minutes further assert: “Knowledge of the work must progress before the work does. We are sure that as the knowledge of the work is brought to the attention of the lawyers of the State they will act in response to suggestions of your committee.” Indeed, the history of civil legal assistance has been one of court and lawyer study, and of response and advocacy.³³

As the Wisconsin Supreme Court addresses the Civil Gideon petition in October, it faces yet another occasion to respond both to current conditions and to the timeless pursuit of equal justice. Whatever the

petition's outcome, the Legal Aid Society, the MBA's progeny, will carry on, guided by its unique mission statement. At its inception, unlike any other legal aid organization, the Milwaukee society added to its “multiple-purpose” mission statement the charge “to do all things necessary for the prevention of injustice.” It resonates today as a duty undertaken as forthrightly by the Milwaukee bar as when our predecessors rallied around the call in 1916.

¹⁶“The oath or affirmation to be taken to qualify for admission to the practice of law shall be in substantially the following form: ... I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice. ...” SCR 40.15 Attorney's oath.

²For the petition, related documents, and written submissions, see www.wicourts.gov/scrules/1008.htm (viewed September 19, 2011).

³The right was restated in the failed, unratified 1846 Wisconsin Constitution at Bill of Rights, Article XVI, Sec. IX. The right was included in the adopted 1848 Wisconsin Constitution at Declaration of Rights, Article I, Sec. 7.

⁴*Carpenter v. Dane County*, 9 Wis. 274 (1859).

⁵*Gideon v. Wainwright*, 372 U.S. 335 (1963).

⁶But it is important to note that in certain types of civil cases, Wisconsin law mandates that the courts appoint counsel at county expense. These select circumstances—which include involuntary commitments, paternity, and termination of parental rights—follow some of the reasoning underlying the jurisprudence of right to counsel in criminal matters, and largely implicate fundamental rights and liberty interests.

⁷Two years earlier, in 1888, the Ethical Culture Society of Chicago established the Bureau of Justice, offering legal assistance to clients regardless of nationality, race, or gender.

⁸Eisenberg served as the NLADA's Executive Director for a number of years during the 1970s and 1980s.

⁹Subsequent locations included the Pereles Building's fourth floor at 85 Oneida Street (razed in 1959 and currently 259 East Wells Street) (1923); the Public Safety Building on the fifth floor of 818 West Kilbourn (1932); the second floor of 757 North Water Street (1950); the YMCA Building at 610 North Jackson Street (1957); the second floor of 1204 West Wisconsin Avenue, with divisional offices located at the Public Safety Building and the Children's Court Center (1970); the Railway Exchange Building at 229 East Wisconsin Avenue, which the Society purchased (1993); and, after the sale of that building, 521 North 8th Street (2005).

¹⁰The legal aid movement nationally received a shot in the arm with the 1919 publication of *Justice and the Poor*, by Reginald Heber Smith. The book provides a catalogue of the movement's status, as well as a challenge to the legal profession to create access to justice without regard to ability to pay, stating:

Without equal access to the law, the system not only robs the poor of their only protection, but it places in the hands of their oppressors the most powerful and ruthless weapon ever invented.

The book informed and complemented the development of the bar and professional standards. At about this time, that “Canons of Ethics” were being developed, as were the “Purposes of an Organized Bar.” To complement the organized bar's development, the American Bar Association created the Special Committee on Legal Aid Work in 1921.

¹¹The Local Bar Association Cooperative Model closely resembles the manner in which Door County Legal Aid operated for years.

¹²Some legal aid societies were part of bar associations and relied primarily on the donated time of lawyers. Others were run

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Pro Bono Corner: Marquette Volunteer Legal Clinic

The Pro Bono Corner is a regular feature spotlighting organizations throughout the Milwaukee area that need pro bono attorneys. More organizations looking for attorney volunteers are listed in the MBA's Pro Bono Opportunities Guide, at www.milwbar.org.

Marquette Volunteer Legal Clinic

Contact: Lori Zahorodny

Office: Marquette University Law School
1215 W. Michigan Street
Milwaukee, WI 53233

Phone: 414-288-7970 *This number is only for those interested in volunteering at the clinic. If you are seeking legal assistance, please visit the clinic or go to www.legalhelpmilwaukee.org*

E-mail: lori.zahorodny@marquette.edu

Ten years ago this January, the Marquette Volunteer Legal Clinic opened as a two hour per week walk-in clinic with a handful of attorney and law student volunteers. Today, the MVLC operates every day of the week in one of four locations, with hundreds of volunteers serving thousands of clients each year.

The MVLC provides basic walk-in legal advice and referrals on a variety of issues, including divorce, custody and support, landlord-tenant disputes, employment matters, municipal citations, and consumer problems. The Clinic gives basic guidance to people who are representing themselves in disputes, assistance in filling out forms or

drafting letters, advice about how to pursue or respond to claims, and information regarding how to access other legal resources that can provide representation.

Central to the MVLC's mission is the cooperation between law students and local attorneys. All meetings with clients are staffed by a volunteer attorney and one or two law students, providing unique opportunities for observation and mentoring. "Students regularly cite their experience at one of our clinics as among their best of law school," says Angela Schultz, Marquette Law School's Student *Pro Bono* Coordinator. "The opportunity to work alongside a volunteer attorney is perhaps the best kind of learning experience."

Also key is the MVLC's history of partnering with other local organizations. Initiated by a group of Marquette law students working with members of the Association of Women Lawyers, the MVLC soon found a long-term home at the House of Peace Community Center on 17th & Walnut Streets. The Law School has further broadened its network of partners in recent years, working with Quarles & Brady and the Council for the Spanish Speaking to establish a south side location with bilingual volunteers, with Milwaukee County Veterans' Services to establish a location at the VA Hospital, and with the Milwaukee Justice Center to establish a courthouse location. Legal Action of Wisconsin's Volunteer Lawyers Project welcomes MVLC volunteers to its annual CLEs. Milwaukee County's Office of Child

Support Enforcement regularly sends a staff member to assist with family law issues, and the Milwaukee chapter of the American Immigration Lawyers Association assists with immigration issues.

The MVLC operates at the House of Peace on Tuesday evenings from 3:00 to 7:00. It is staffed each week by a rotating group of volunteer supervising attorneys and law students. Supervising attorneys are asked to volunteer one evening per month from 3:00 to 5:00 or 5:00 to 7:00. Attorneys interested in working with military veterans can volunteer at the VA Hospital Campus on the first or third Mondays of the month, from 4:00 to 6:00. Other clinic locations are primarily staffed by groups of lawyers from large law firms, including Foley & Lardner, Reinhart Boerner, Michael Best, O'Neil Cannon, and Hinshaw & Culbertson. Each supervising attorney and student receives training and orientation, and malpractice insurance is provided through Marquette University.

The MBA's Third Annual *Pro Bono* Cocktail Reception will take place on October 17 from 5:00 to 7:00 at the MBA, 424 East Wells Street. Members of the bench and bar will give a brief presentation at 5:45 about the rewards—to oneself and the community—of making *pro bono* work a part of your professional life, and there will be plenty of time to chat with members of various *pro bono* organizations and your colleagues in the bar. We urge all MBA members, and particularly newer attorneys, to join us.

Easing the Burden continued from p. 10

the MBA's Modest Means Guardianship Panel. The attorneys on this unique panel have agreed to prosecute the guardianship cases for a flat fee of \$600. Referrals are made via an impartial rotation, but geographical location of the attorney and languages spoken, if applicable, are considered when making the referral. "We are extraordinarily pleased that the Milwaukee Bar Association and local attorneys have stepped up to the plate to address this important legal challenge for the most vulnerable members of our society," stated Judge Dwyer. "Projects like GAP help restore people's confidence in the professionalism of our legal system."

If you are interested in joining the Modest Means Guardianship Panel, please contact Britt Wegner at 414-276-5931 or bwegner@milwbar.org.

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October 26, 2011

MBA Presents

Long-Term Care Insurance

Recent income tax law changes have enhanced the use of long-term care insurance to offset the possibility of depletion of an estate. This program will provide a fundamental review of who needs to consider long-term care insurance, the benefits of long-term care insurance, and what to look for in long-term care insurance policies.

Speakers: Mary Kay Bultman, R.N., MS, MBA, CLTC, Bultman Financial; Ralph D. Bultman, CPA, CLU, ChFC, Bultman Financial

8:30 – 9:00 a.m. (Registration/Continental Breakfast)

9:00 – 11:00 (Presentation)

2.0 CLE credits

October 28, 2011

MBA Presents

The Art of Representing Children

Effective child advocacy, with an in-depth look at your role, the rules, and the child's mind
Speakers: Margaret G. Zickuhr, Houseman & Feind; Michael J. Vruno, Jr., Legal Aid Society of Milwaukee, GAL Division; Dr. Sheryl Dolezal, clinical and forensic psychologist, North Shore Psychotherapy Associates (NSPA)

8:30 – 9:00 a.m. (Registration/Continental Breakfast)

9:00 - 12:30 (Presentation)

12:30 - 1:00 (Lunch will be provided)

1:00 - 4:00 (Presentation)

7.0 CLE credits, including 1.0 ethics credit

7.0 GAL credits

Concealed Carry continued from p. 11

In sub. (14)(a), the Department is directed to revoke, yet in the very next paragraph, the Department is directed to suspend. The Department, which is responsible for promulgating rules in regard to licensing, will be confronted with this anomaly.

While a conviction of any felony results in the automatic revocation of a concealed carry license, misdemeanor convictions, regardless of number, do not. Thus, licensees convicted of misdemeanors for unlawful use of their handgun (i.e., disorderly conduct while armed, carrying a firearm while intoxicated, intentionally pointing a firearm at a person without privilege) would not have their licenses either suspended or revoked. Similarly, a license for electric weapons, knives, or billy clubs would not be suspended or revoked if the licensee uses that weapon in a misdemeanor battery or similar crime.

IV. False Swearing

In order to obtain a license, an applicant

must submit to the Department, among other items, an application and proof of training pursuant to § 175.60(7). Importantly, it does not appear that either the application or the proof of training requires an oath or affirmation. The Act states that providing false information on the application may be prosecuted as false swearing, contrary to § 946.32. Additionally, the act permits false swearing prosecution of firearm instructors who provide false information that an applicant has met the training requirement.

Sec. 946.32 delineates both felony and misdemeanor violations for false swearing. The felony version found in sub. (1)(a) requires that the false statement be made under oath or affirmation when such oath or affirmation is “authorized or required by law.” Because the concealed carry statute does not require such an oath or affirmation, felonious prosecution appears to be precluded. *See also State v. Slaughter*, 200 Wis. 2d 190, 546 N.W.2d 490 (Ct. App. 1996).

The misdemeanor crime of false swearing requires the individual to make a false statement, which the person does not believe to be true, under oath or affirmation. Therefore, if an applicant or training instructor files a document without an oath or affirmation, it does not appear that he or she would be subject to criminal prosecution under this statute. Because the concealed carry statute does not require such an oath or affirmation, individuals would be able to file documents containing false information without one. Such situations would not satisfy the elements of misdemeanor false swearing.

V. Conclusion

This article only addresses those few aspects of Act 35 that the writer found the most interesting. There are clearly many other areas for analysis, debate, and consideration by prosecutors, lawyers, and the courts in the coming years.

Legal Aid continued from p. 20

by law schools, social agencies, or municipalities and had paid staff. Some were private corporations (eventually “nonprofit law firms”).

¹³The Legal Aid Society itself received a Ford Foundation grant in 1969 for a Public Defender Program pilot project.

¹⁴In addition to local programs, OEO funding created a unique national infrastructure of centers engaged in national litigation, and legislative and administrative representation of eligible clients, as well as support, legal assistance, and training for local programs.

¹⁵The Milwaukee Plan Legal Services originally included the Legal Aid Society, Milwaukee Legal Services, and Freedom Through Equality.

¹⁶In mid-1971, the Mondale-Seiger Legal Service Corporation bill was introduced; the President vetoed it, primarily because he felt he lacked enough control over Board selection. In 1973, in the shadow of his proposal to dismantle the OEO, President Nixon proposed legislation authorizing the Corporation.

¹⁷The LSC Act created a corporation controlled by an independent, non-partisan Board, appointed by the President and confirmed by the Senate, with no more than six of its eleven members from the same political party. A majority of the Board is attorneys, and the Board includes individuals who would be eligible for legal services. In addition, the Board is to be generally representative of the organized bar, attorneys providing legal assistance to the poor, and the general public. The Corporation receives federal funds, and makes grants to and monitors independent local legal services programs. Local programs are governed by their own boards of directors, their own priorities, and their own decisions about case acceptance, subject to Congressional rules.

¹⁸The 1981 inauguration of Ronald Reagan presented the LSC with a hostile Presidential administration. Initially, the Reagan administration sought LSC’s complete elimination, which Congress and the formal bar opposed. Congress compromised under pressure, however, and reduced the 1982 LSC funding by 25 percent. The same scenario was repeated during the next seven years—with the administration “zero-budgeting” the LSC and the ABA and its allies persuading Congress to continue LSC at existing funding levels.

¹⁹The 1990s began with small but significant improvements

in the situations of the legal services programs. The first Bush Administration turned away from the overt hostility of its predecessor to legal services, consistently recommending that Congress continue to fund the Corporation, albeit at constant levels.

²⁰Key Congressional decision-makers determined that major changes in the delivery system would occur, including practice restrictions on LSC grantees. The combination of the new restrictions and the cut in LSC funding indeed resulted in major changes in the civil legal assistance delivery system and the Corporation itself.

²²The Project panels were created pursuant to the LSC regulations of the early 1980s, which required that 12.5% of the law firm’s LSC funding be spent on “Private Attorney Involvement.” To maximize service to clients, Legal Action committed its allocation to the recruitment, training, and co-counseling of cases by private practitioners.

²¹[Footnote intentionally omitted]

²²SCR 20:6.5 Nonprofit and court-annexed limited legal services programs

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization, a bar association, an accredited law school, or a court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to SCR 20:1.7 and SCR 20:1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to SCR 20:1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by SCR 20:1.7 or SCR 20:1.9(a) with respect to the matter.

(b) Except as provided in par. (a)(2), SCR 20:1.10 is inapplicable to a representation governed by this rule.

WISCONSIN COMMITTEE COMMENT: Unlike the Model Rule, paragraph (a) expressly provides coverage for programs sponsored by bar associations and accredited law schools.

²³<http://milwaukee.gov/MJC> (viewed September 19, 2011).

²⁵See, Dugan, Hannah C. “Whose Providing Legal Counsel to Wisconsin’s Poor?” *Wisconsin Lawyer*, Vol. 74, No. 5, May 2011, http://www.wisbar.org/am/template.cfm?section=wisconsin_lawyer&template=/cm/contentdisplay.cfm&contentid=48110

(viewed September 19, 2011).

²⁶<http://wistaf.org> (viewed September 19, 2011).

²⁷“In order to aid the courts in carrying on and improving the administration of justice and to facilitate the improved delivery of legal services to persons of limited means in non-criminal matters the following are created: ... (1m) An interest on trust accounts program.” SCR 13.01.

²⁸In 2005, the Wisconsin Supreme Court amended the rule to include an annual assessment of \$50.00 per lawyer for a subfund within WisTAF. In 2008, the rule was amended again to include judges in the assessment.

²⁹While legal services funding has gradually increased in the last two biennial budgets, the 2011-2012 budget proposal of \$5 million over the biennium was eliminated by the Joint Finance Committee in June 2011. Wisconsin and Idaho currently are the only two states whose budgets fail to include any legal services allocation.

³⁰(1) In order to aid the courts in improving the administration of justice by supporting civil legal services to those who cannot afford them, the State bar shall create an Access to Justice Commission.

(2) The mission of the Commission is to develop and encourage means of expanding access to the civil justice system for unrepresented low income Wisconsin residents.” SCR 14.02.

³¹http://www.wisbar.org/am/template.cfm?section=bridging_the_justice_gap (viewed September 19, 2011).

³²<http://wisatj.org> (viewed September 19, 2011).

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Milwaukee County Small Claims Court Prepares for Big Change

Honorable Jane Carroll and Attorney Vintee Sawhney

Small claims court in Milwaukee County has long been an important part of the judicial system, providing an inexpensive forum for litigants to resolve their disputes in a fast and efficient manner. The most common types of small claims cases include claims for money, personal injury and other tort claims, evictions, and replevins (repossessions of property). While not as common, small claims court also provides a forum for actions for the return of earnest money tendered under a contract for purchase of real property; actions for the confirmation, vacation, modification, or correction of an arbitration award; actions by municipalities to recover a tax; and eviction actions due to foreclosure.

The jurisdictional limit for small claims actions has remained at \$5,000 for the past 16 years. Effective July 1, 2011, however, Act 32 of Governor Walker's 2011-2013 Budget Bill mandates that the dollar limit for small claims jurisdiction be raised from \$5,000 to \$10,000 in actions for replevin under Wis. Stat. §§ 810.01 to 810.13 where value of the

property claimed does not exceed \$10,000, and in other civil actions where the amount claimed is \$10,000 or less. A taxing authority may also use the small claims procedures to recover a tax where the amount claimed, including interest and penalties, is \$10,000 or less. The jurisdictional amount increase does not apply to third-party complaints, personal injury claims, or other tort claims. These claims continue to be governed by the current amount of \$5,000 or less.

This increase is likely to have a substantial impact on the Milwaukee County court system, as well as on small claims litigants. The most obvious ramification will be the increase in cases that small claims court will handle due to a shifting of cases from large claims to small claims. Small claims in Milwaukee County is an extremely efficient, high-volume court consisting of four court commissioners, one judge, and many clerks, handling over 50,000 cases annually. While the impact of the anticipated volume increase on the court's ability to timely handle cases remains to be seen, the numbers are being

documented by clerk's office. Once a sufficient amount of data is collected, an analysis can be undertaken to determine if additional resources are needed.

The more concerning impact of the new law is that the exceptions to the increased jurisdictional limit will require litigants and courts to identify the plaintiff's legal theory if the requested amount is over \$5,000. Many litigants in small claims court are *pro se*, do not understand their exact legal theories, and cannot identify a tort. The Milwaukee Justice Center, a tremendous resource for *pro se* litigants, has developed definitions that are posted and handed out to potential litigants; however, a judicial officer will ultimately determine whether small claims jurisdiction is proper. Moreover, the complaints filed by small claims litigants often contain limited facts, and court commissioners and judges will need to take additional time to ascertain what type of claim is before them to ensure that jurisdiction is proper when the amount requested is over \$5,000.

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